

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DARRIN DIEUNTAY WILSON

PLAINTIFF

v.

CIVIL ACTION NO. 3:14cv511-HTW-LRA

UNKNOWN NICKSON, *et al.*

DEFENDANTS

ORDER SETTING OMNIBUS HEARING

This cause is before the court *sua sponte*, and the undersigned finds that an omnibus hearing should be held in order to see that this case is moved expeditiously. At this hearing, the court will seek: 1) to determine if dismissal under 28 U.S.C. §1915(d) is appropriate; 2) to define the issues to be litigated; 3) to assure appropriate discovery and to define the limitations of discovery; 4) to ascertain the potential witnesses or exhibits and to provide appropriate assistance to the *pro se* litigant in obtaining evidence for trial; 5) to entertain any motions of the parties, including motions regarding the issue of whether or not the plaintiff exhausted his administrative remedies prior to filing this federal lawsuit; and, 6) to schedule further proceedings and a trial on the merits of the case for a date certain, if appropriate.

The parties are directed to the case of *Gonzalez v. Seal*, 702 F.2d 785, 787-88 (5th Cir. 2012), which held that "the PLRA pre-filing exhaustion requirement is mandatory and non-discretionary," and that "district courts have no discretion to waive the PLRA's pre-filing exhaustion requirement." *See also Jones v. Bock*, 549 U.S. 199, 211-213 (2007) (exhaustion is an affirmative defense that must be pled). **Any motions regarding the issue of exhaustion should be filed on or before 30**

days from the entry of this Order. The non-moving party shall file any written response within 14 days thereafter. The motion shall be heard at the omnibus hearing, and the Court shall enter a ruling on this issue prior to proceeding further in the case. The parties are advised that the exhaustion requirement shall be strictly applied as long as administrative remedies are available.

This hearing shall operate as a *Spears* hearing (*see, Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), and/or a scheduling, discovery, status and pre-trial conference under Rule 16, Fed.R.Civ.P. An Omnibus Order will be entered after this hearing which will stand in lieu of a Scheduling Order and/or Pretrial Order.

IT IS, THEREFORE, ORDERED:

1. That the parties appear for an Omnibus Hearing before the undersigned United States Magistrate Judge at the **JACKSON FEDERAL COURTHOUSE, 501 E. COURT STREET, SIXTH FLOOR, WEST TOWER, COURTROOM 6-D, JACKSON, MISSISSIPPI**, on **MAY 12, 2016, at 9:00 A.M.**

2. That the parties prepare to discuss at the hearing discovery necessary to prepare for trial. No requests for discovery shall be served by the parties prior to the omnibus hearing.

3. That the parties complete the attached witness list of potential witnesses they propose to call at trial, providing appropriate addresses for each, including the MDOC number, unit number and institution where those proposed witnesses who are incarcerated are housed. The parties shall provide a brief summary of what each proposed witness would testify to at trial and bring the completed witness list to the hearing.

4. THAT FAILURE OF THE PARTIES TO PROVIDE THE ABOVE INFORMATION FOR EACH PROPOSED WITNESS OR FAILURE TO BRING THIS INFORMATION TO THE OMNIBUS HEARING WILL OPERATE AS A WAIVER OF

THE RIGHT TO CALL THAT PERSON TO TESTIFY AT TRIAL.

5. That the parties complete the attached exhibit list by listing each document and/or object they propose to introduce as evidence at trial providing a brief description of each proposed exhibit and a short statement of the purpose for which the exhibit will be introduced and bring the completed exhibit list to the hearing.

6. THAT FAILURE OF THE PARTIES TO PROVIDE THE ABOVE INFORMATION FOR EACH PROPOSED EXHIBIT OR FAILURE TO BRING THIS INFORMATION TO THE OMNIBUS HEARING WILL OPERATE AS A WAIVER OF THE RIGHT TO HAVE THAT EXHIBIT INTRODUCED AS EVIDENCE AT TRIAL.

7. That the defendant shall bring copies to the hearing for both the court and the plaintiff of all official documents regarding the plaintiff's incarceration in their facility. This shall include jail logs, RVR reports, and any other documentation relevant to the issues presented in the complaint.

8. If the complaint involves a medical claim, the defendant shall bring copies to the hearing for both the court and the plaintiff of all of plaintiff's medical records which are available to the defendant. The plaintiff shall also bring any available medical records to the hearing.

9. That the parties shall be prepared to make a full statement of each and every claim or defense and how they propose to prove those claims or defenses. All outstanding motions will be considered by the court at this hearing. Any motion not brought before the court at this omnibus hearing will be deemed abandoned and waived.

10. All motions to amend shall be filed no later than ten (10) days prior to the omnibus hearing.

11. Any motions regarding the issue of exhaustion shall be filed no later than thirty (30) days from the entry of this Order.

12. THAT THE CLERK OF COURT IS DIRECTED TO ISSUE A WRIT OF HABEAS CORPUS *AD TESTIFICANDUM* FOR THE PLAINTIFF FOR THIS HEARING ON THE DATE AND TIME SET FORTH ABOVE.

ORDERED March 9, 2016.

/s/ Linda R. Anderson

LINDA R. ANDERSON
UNITED STATES MAGISTRATE JUDGE

WITNESS LIST

PLEASE LIST ALL PERSONS YOU WISH TO CALL AS A WITNESS IN THE TRIAL OF YOUR CASE. FOR EACH PERSON LISTED, WRITE ON THIS SHEET:

- 1. NAME**
- 2. MDOC NUMBER, IF APPLICABLE**
- 3. LOCATION OR ADDRESS**
- 4. STATEMENT OF THEIR PROPOSED TESTIMONY**

1.

2.

3.

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EXHIBIT LIST

**PLEASE LIST ALL OF THE EXHIBITS YOU WILL USE IN THE TRIAL OF YOUR CASE
(papers, medical records, pictures, statements of witnesses,
etc.) FOR EACH EXHIBIT LISTED, WRITE ON THIS SHEET:**

- 1. A BRIEF DESCRIPTION OF THE EXHIBIT**
- 2. A SHORT STATEMENT OF THE PURPOSE FOR WHICH
THE EXHIBIT WILL BE INTRODUCED.**

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